IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.1396 of 2006

Prashant Narayan Karanjkar — Applicant
Vs.
Nitin Vasant More & ors. — Respondents

Mr.S.A.Sawant for applicant.
Mr.Nitin Nikam for resp.no.1.
Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

November 1, 2007.

P.C.

. Heard Mr.Sawant, the learned counsel for the applicant who is seeking leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned Judicial Magistrate, First Class at Satara in Criminal Case No.7359 of 2003 filed under Section 138 of the Negotiable Instruments Act, 1881. I have gone through the reasoning set out in support of the acquittal order dated 14/2/2006. It was the case of the complainant that he had advanced a loan of Rs.3,50,000/- by way of hand-loan in different instalments and by cash and in discharge thereof the subject dishonoured cheque dated 26/5/2003 was issued by the accused. The trial Court held that the complainant could not prove that

the cheque was issued for repayment of any debt or for discharge of any other legal liability and this finding cannot be termed to be erroneous having regards to the depositions of the complainant in his cross-examination as well as the averments made in the complaint. The complainant could not bring any documentary proof on record that such a loan was advanced by him.

. The Officer of the Bank Shri Bhillare who was examined as DW 1, also stated before the trial Court that the cheque was not encashed on account of the letter issued by the accused stating that the cheque-book was stolen / misplaced. The letter was at Exhibit 61 and it was dated 13/2/2002. The complainant could not bring on record a copy of his Income tax returns to show that an amount of Rs.3,50,000/- was given to the accused by way of hand-loan nor did he examine any witness who could state that the loan amount was paid to the accused in his presence. The defence taken by the accused was multi-faceted but he stated in his statement recorded under Section 313 of Cr.P.C. that the complainant is an LIC agent and for the payment of the Insurance premium by the accused and his wife the cheques

issued were misused by the complainant.

. Notwithstanding the defence taken by the accused, the fact remains that the complainant could not prove the issue of debt or any other legally enforceable liability in discharge of which the subject cheque was issued.

. Hence I am satisfied that the reasoning set out in support of the acquittal order does not require to be reconsidered by this Court. Leave to appeal is hereby refused and the application is rejected.

(B.H.MARL